

that one sees local emergency workers driving down the streets of Rhode Island towns on boats and jet skis, but that is what it took to get the residents out who had been trapped by the unprecedented floodwaters.

The day after the rain subsided, the flooding was still substantial. This is the scene behind a local mechanic's shop on Elmwood Avenue in Cranston. As we can see, the garage building is almost entirely underwater. Nearby I was able to see cars and trailers for this mechanic's shop just under the surface. Later on when the water came down, I could see that under this were cars. The water is right over the roof of the cars and so they are not visible now, but what I thought was an empty parking lot was filled with cars. I went back and saw it later when the waters had gone down.

Here is a different shot of Elmwood Avenue, looking across to an old mill complex filled up through the ground floor. The floodwaters are not only covering the road itself but the entire parking lot and into the mill building itself. The local residents obviously were distraught by this kind of damage. The bridge that is down below this, the Wellington Avenue bridge, thankfully, held against the pressure of the water rushing past and over it. But two other bridges in Coventry and North Providence were so damaged by the flow of the water past and over them, they have been condemned and have to be completely rebuilt.

I went up to Cumberland to visit Mayor Dan McKee and to see some of the damage there. His first responders took us in this boat out to Hope Global, which is a company on the banks of the river. It is the Blackstone River this time, not the Pawtuxet. This river was the cradle of the Industrial Revolution. The famous Slater Mill in Rhode Island, a true spark that lit off America's Industrial Revolution, was a riverside mill that used the rivers for power. Historically, Rhode Island's working waterfront has been a riverfront where mills up and down the Blackstone, up and down the Pawtuxet, up and down other rivers took advantage of water power. Then, as we moved from water power to electric power, they stayed. But they stayed very vulnerable to the rivers. So from Hope Global down to Ashaway Line and Twine Manufacturing Company and Bradford Printing and Finishing, down near Westerly, the riverside businesses in Rhode Island were swamped and flooded.

Now businesses that had existed for generations, that employed many hundreds in each plant, lie submerged and silent and out of work.

One of the things that impressed me during the course of my visit was the resilience and courage shown by Rhode Islanders. We took this picture at the Okonite Company. It was also covered by the floodwaters, but it was nice to see both the American and the Rhode Island flags flying high, notwith-

standing the devastation that surrounded them. This struck me as a fitting example of the perseverance and resilience of Rhode Islanders responding to this crisis. It is often true that trying times bring out the best in people. Certainly this flood brought out the best in many folks in Rhode Island.

Everywhere I have traveled in the days since the floods began, I have seen neighbors helping neighbors, and I have witnessed the extraordinary diligence and courage of the municipal workers, the first responders, the police and fire folks, public works, literally all municipal employees who worked long hours, wet hours, cold hours, tired hours helping their communities.

A couple in Westerly had to evacuate their home in 30 minutes as the floodwaters picked their house up off its foundation. Amazingly, after all they had been through, they were still more concerned for their neighbors than for themselves. They wrote to me:

... as tough as things are for now, we see so many of our neighbors that had no insurance and they lost everything. Many of the people who were renting apartments were given five minutes to evacuate. As we were leaving, we took all of the food from our fridge and were able to distribute it to some of the folks running for cover. Life seems to throw lots of curveballs and you never anticipate when you get up in the morning that you will be homeless by the afternoon but Mother Nature has a mind much her own.

I want to point out that the word on the Rhode Island State flag is "hope." As I look at this picture and see the flag flying high amidst the devastation from the flood below, I am reminded of countless acts of kindness and generosity, indeed hope, which have accompanied the troubling, sad, and difficult events of recent weeks. The flooding has destroyed homes, closed businesses, and ended jobs, but the people of Rhode Island have stood up remarkably well. Spirits are strong. But the job of rebuilding roads, bridges, sewage treatment plants, public facilities, homes, and businesses is a colossal and daunting task for a State 27 months into severe recession.

Now we in Rhode Island need help from the Federal Government to fulfill that hope and to help us rebuild. Just as Congress was quick to respond in the wake of Hurricane Katrina in 2005 and following the flooding in Iowa and North Dakota in 2008 and 2009, I ask my colleagues to work with my senior Senator, JACK REED, and I to bring needed assistance to Rhode Island as quickly as possible.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Arizona.

Mr. KYL. Madam President, may I be advised when I have spoken for 7 minutes.

The ACTING PRESIDENT pro tempore. Yes.

#### JUDICIAL CONFIRMATION PROCESS

Mr. KYL. Madam President, I rise to talk about the judicial confirmation

process, given the fact that President Obama will soon be nominating someone for the Supreme Court to replace retiring Justice Stevens. There has been a lot written about this subject. It would be useful, at least from my standpoint, to clarify or elucidate how I view this and how I think a lot of my colleagues do on both sides of the aisle.

The question of a filibuster arises. The best way to put into context what folks mean when they talk about judicial activism as potentially bringing about a filibuster is to at least describe what I think about that. All of us in the Senate, whether we have supported a filibuster or not, would agree that all else being equal, it is not something we should do for judicial nominations, especially for a Supreme Court nomination. There has not been a successful filibuster of a Supreme Court nomination, thankfully, despite the fact that the last two nominees—especially the last nominee to the Court by President Bush, there was an attempt to filibuster, and even then-Senator Obama, now President Obama, participated in that attempt.

What would cause Senators to not just vote against a nominee but actually go so far as to try to prevent the nominee from receiving a vote up or down?

There is this concept of extraordinary circumstance that evolved about 4 years ago when the so-called Gang of 14, seven Republicans and seven Democrats, agreed that it would not be appropriate to filibuster a judicial nominee except in extraordinary circumstances. That is where that phrase "extraordinary circumstance" came about.

There are a lot of Members of the Senate who believe one of those extraordinary circumstances could be a situation where a nominee is particularly activist in the sense that it would appear that he or she goes on to the bench with preconceived notions about specific kinds of societal issues or questions that may come before the Court and a bias toward resolving those matters one way or the other, as opposed to simply taking the facts of each case and reading the law to see what the precedents of the Court are, what the statute is, if there is a law involved, and deciding the case on the merits of that specific case irrespective of the judge's views about the question from a political or philosophical standpoint.

There are a couple of recent examples I wanted to bring to the attention of my colleagues which illustrate the kind of activism to which I and some of my colleagues would object.

The chairman of the Judiciary Committee, the Senator from Vermont, was quoted in Politico today as making a statement which I think illustrates the issue well. Senator LEAHY is quoted as saying this, that he thinks one of the questions to the potential nominees is going to be this: "Do you share our concern about the fact that the court

always seems to side with the big corporate interests against the average American?"

Aside from the fact that I think that is not a fact, that the Court always sides with big corporate interests against the average American—that is, obviously, a very politically charged statement—the question is, Is it really appropriate to ask a potential judicial nominee whether that nominee is going to side with big corporate interests or whether the nominee would want to side with some other kind of interest in the litigation? Well, I think it is appropriate to ask whether the nominee has biases one way or the other that would preclude him or her from deciding a specific case on the merits of that case as opposed to whether, from a general philosophical standpoint, that nominee would be on the side of big corporate interests or always against the big corporate interests.

When Chief Justice Roberts was before our committee, he was asked a question like this, a question about whether he thinks it would be appropriate to rule for the big guy or the little guy, and I think he said it correctly. He said: If the law supports the big guy, then the big guy should win the case. If the law supports the little guy, then the little guy should win the case. You do not go on the bench with an idea that: I am always going to rule against the big guy or—commenting on Senator LEAHY's statement here—I am going to rule against big corporate interests. That presents a dilemma, by the way, where you have corporation A suing corporation B. I do not know how you are going to resolve that if you are always going to rule against big corporate interests.

But the point is, to go on the bench with that attitude would be wrong. The big corporation might have the right law and facts in a particular case. In another case, the person suing or being sued by the big corporate interest might have the law and the facts on their side. That should be the determination of how the case comes out, not your preconceived notions—for example, your intention to always rule against "big corporate interests."

Here is another example: One of my colleagues on the Judiciary Committee on a television program said he wanted to see a nominee who would be hard on Executive power. We have three branches of government: the executive, the legislative, and the judicial. The Constitution sets up a delicate balance among those three branches of government, and there is a constant tension between the powers exerted by the branches and against the branches. Those tensions result in litigation sometimes.

Sometimes there is a claim that the Executive is taking too much power unto himself. That charge was made against virtually every President who, in my memory, has ever served. It certainly is being made against the President today. But you do not go on the

bench with the notion that: If a case ever comes before me involving a contest of whether the Executive has the power to do something versus the legislature, for example, I am going to rule against the Executive. I am going to be hard on Executive power. That would be wrong. You do not even know what the facts of the case are and what the precedents might be relating to those particular facts.

The ACTING PRESIDENT pro tempore. The Senator has used 7 minutes.

Mr. KYL. Thank you, Madam President. I appreciate it.

I will conclude with this particular example: You want a judge who is going to be on the Court to say: I understand the balance of power. I have read the law, and I understand the precedents that relate to this particular kind of fact pattern. And based on the law and based on these facts in this particular case, I believe that either the Executive should have the power or not. But I do not come to that conclusion based upon a preconceived political, ideological notion that we need to rein in Executive power any more than I believe we should rein in legislative power or judicial power.

This is what a lot of us mean when we talk about judicial activism. It is the difference between someone who comes to the Court with firmly held philosophical beliefs that would cause that individual to be more predisposed to rule on the basis of those beliefs than on the facts of the case or the law in any particular situation. So when my colleagues on the Democratic side say they are looking for a nominee who will have a penchant for ruling in a particular way in particular cases, you will see objections from people like me who will say: No, that is wrong. That is activism. That is basing decisions on ideology rather than on what the law is.

I will conclude by saying this: The President has it fully within his power to nominate a candidate for Supreme Court Justice who generally has been seen as deciding cases based on their merits rather than from an ideological perspective. But to the extent the President chooses someone who has been very active politically and has expressed strong political views or who from the bench has seemingly made decisions based upon a preconceived ideological notion rather than on the basis of the facts and law to come before him or her, in that situation, then, you would tempt opposition and potentially even a filibuster depending upon how serious the situation was or how extraordinary it was, to cite the particular phrase.

So I hope that sort of sets the groundwork here for our evaluation of the President's nominee and for a public understanding of the circumstances under which some of us would oppose a nominee and under which perhaps even, in an extraordinary situation, a filibuster would result. I certainly hope that is not the case, that that does not happen.

I am sure the President realizes that if he nominates someone who does come clearly to the attention of the Senate from a perspective of even-handed justice, that nominee will be treated fairly, that the process could move much more quickly, and that the outcome can be much more favorable.

The ACTING PRESIDENT pro tempore. The Senator from Texas.

#### NASA

Mr. CORNYN. Madam President, this week President Obama is scheduled to visit the Kennedy Space Center in Florida. Many Americans expect the President to explain his vision for human space flight in the decades ahead. I would say this vision is long overdue.

One year after celebrating its 50th anniversary, as well as the 40th anniversary of the first Moon landing, the White House has proposed a budget that will force NASA to abandon its historic role in space exploration. The administration has stated its intention to terminate NASA's Constellation Program, our Nation's flagship endeavor to return Americans to the Moon and beyond. After \$9 billion invested over 7 years, the President would leave NASA adrift and without a mission. I hope the President will announce that he has thought better of that initial decision, and this morning I would like to take a few minutes to explain why I think he should do so.

Texas is proud of our close connection with NASA's human space flight program, and we recognize how it has helped transform the greater Houston area into a high-tech leader. Johnson Space Center has helped send astronauts into space for nearly four decades. We would love for the President to visit the Johnson Space Center and see how we have helped our astronauts complete their missions and return home safely.

We remember the region endured several years of challenges following the termination of the Apollo Program in 1974. We saw some of the brightest minds at the Johnson Space Center end their careers. The future of the entire industry seemed uncertain.

NASA Administrator Charles Bolden was recently quoted as saying:

With all due respect to everybody who opposes the budget—

In other words, the cut of the Constellation Program—

a very serious and real concern is the jobs.

Now, he was correct in one way: the cancellation of Constellation, combined with the retirement of the space shuttle, could cost the region as many as 7,000 direct jobs, according to the Bay Area Houston Economic Partnership. With all due respect to General Bolden, Texas support for human space flight is not merely based on parochial concerns. We understand the local economic impact would be nothing compared to the strategic opportunity cost for the United States of America.